

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHRISTOPHER E. BROWN,
an individual,

Plaintiff,

VS.

R.J. 51, INC.,
a New York Corporation,

Defendant.

JURY TRIAL NOT DEMANDED

Index No. 1:24-cv-06935

Judge

COMPLAINT

Plaintiff, CHRISTOPHER E. BROWN (hereinafter “MR. BROWN”), through his undersigned counsel, hereby files this Complaint and sues Defendant R.J. 51, INC., a New York Corporation, for damages, declaratory and injunctive relief, attorney’s fees and costs pursuant to the Americans with Disabilities Act of 1990, 42 U.S.C. § 12181 et seq., (the “ADA”), the New York State Human Rights Law, N.Y. Exec. § 296(2)(a) (the “NYSHRL”), and the New York Civil Rights Law, N.Y. Civ. Rights § 40 et seq., (the “NYCRL”) and hereby alleges:

JURISDICTION AND PARTIES

1. This is an action for damages, declaratory and injunctive relief pursuant to the ADA, the NYSHRL and the NYCRL. This Court is vested with original jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343 and has pendant and supplemental jurisdiction over the state law claims that are alleged pursuant to 42 U.S.C. § 1367, *et seq.*

2. Venue is proper in this Court pursuant to 28 U.S.C. §1391(b).

3. MR. BROWN is a resident of the Queens, New York. He also regularly commutes into Manhattan three to five times a week.

4. MR. BROWN suffers from Arthrogryposis, which causes him to be confined to a wheelchair. The condition also causes atrophy in his arms, hands, shoulders and elbows, which makes it extremely difficult to reach for, grip and manipulate objects.

5. Due to his disability, Plaintiff is substantially impaired in several major life activities and requires a wheelchair for mobility.

6. Upon information and belief, Defendant, R.J. 51, INC., (hereinafter referred to as “DEFENDANT”) is a New York Corporation. Upon information and belief, Defendant is the owner of the real property and improvements which are the subject of this action, to wit: (the “Property”) which includes a restaurant known as Toasties, is generally located at 23 E. 51st St, New York, NY 10022. Defendant is subject to compliance with the ADA.

7. All events giving rise to this lawsuit occurred in the Southern District of New York.

**COUNT I - VIOLATION OF TITLE III OF THE
AMERICANS WITH DISABILITIES ACT**

8. The allegations set forth in the foregoing paragraphs are incorporated by reference as if fully set forth herein.

9. The Property, a deli-style restaurant, is a place of public accommodation and is subject to the ADA.

10. MR. BROWN has attempted to visit the Defendant’s Property, a restaurant, several times over the past year because he enjoys the food served there. Further, he works within just a few blocks of the Property owned/operated by Defendant and passes by the store several times a week. However, due to the layout of the store, Plaintiff cannot access the main food ordering area or dining tables. Accordingly, he is currently deterred from visiting due to the barriers which affect his disability.

11. During his initial attempted visits, MR. BROWN encountered serious difficulty accessing the goods and utilizing the services therein due to the architectural barriers discussed herein. Specifically, among other issues, the main area of the store which includes the food ordering counters, the cashier stations, the dining tables and the restrooms are all located on the lower level of the store down several steps without a ramp. The upper area of the store only contains the salad bar ordering area but none of the other amenities.

12. Due to these barriers, MR. BROWN was denied and continues to be denied the full and equal enjoyment of the goods and services offered at the Property.

13. MR. BROWN intends to and will visit the Property to attempt to utilize the goods and services in the near future once the barriers are removed and he is able to access the main sections of the Property such as the main food ordering counters and dining tables.

14. Defendant is in violation of 42 U.S.C. § 12181 et seq. and 28 C.F.R. § 36.304 et seq. and is discriminating against the Plaintiff due to, but not limited to, its failure to provide and/or correct, the below architectural barriers to access, which Plaintiff personally encountered and which limited his access to the Property:

A. Plaintiff encountered an inaccessible entrance into the Toasties restaurant at the Property due to a narrow vestibule which lacks the necessary clear floor space and door clearance for Plaintiff to independently operate the doors without assistance. Due to this condition, Plaintiff has gotten trapped in the vestibule and had to wait for another customer to help him by opening the door.

B. Plaintiff encountered an inaccessible dining room area, restrooms, cashier and food/beverage ordering counters because they are all located after several steps without a ramp or lift for wheelchair access. Due to these issues, Plaintiff is unable to eat at the restaurant because there are no dining tables on the entrance level and is unable to see the many foods on display for purchase again, because they are on another level. Likewise, he is unable to independently order or pay for anything at the restaurant without an inconvenient process of an employee running up and down the stairs to take his order, show him food items, retrieve his food, take his payment to the cashier downstairs and then back up to give him his food and receipt. This process also annoys customers waiting in line behind him, which causes further embarrassment.

15. To date, the barriers and other violations of the ADA still exist and have not been remedied or altered in such a way as to effectuate compliance with the provisions of the ADA.

16. Removal of the barriers to access located on the Property is readily achievable, reasonably feasible and easily accomplishable without placing an undue burden on Defendant.

17. Removal of the barriers to access located on the Property would allow Plaintiff to fully utilize the goods and services located therein.

18. Independent of his intent to return as a patron to the Property once the barriers are removed, Plaintiff additionally intends to return to the Property as an ADA tester to determine whether the barriers to access stated herein have been remedied.

19. The Plaintiff has been obligated to retain the undersigned counsel for the filing and prosecution of this action. Plaintiff is entitled to have his reasonable attorneys' fees, costs, and expenses paid by Defendant pursuant to 42 U.S.C. § 12205.

COUNT II - VIOLATION OF NEW YORK STATE HUMAN RIGHTS LAW

20. Plaintiff hereby incorporates by reference all allegations contained in all preceding paragraphs of this Complaint as if they were expressly set forth herein.

21. Defendant operates a business establishment dealing with goods and/or services within the jurisdiction of the State of New York and, as such, is obligated to comply with the provisions of the NYSHRL, N.Y. Exec. Law section 290 et seq.

22. The conduct alleged herein violates the ADA.

23. The conduct alleged herein violates the NYSHRL.

24. The NYSHRL states that “[i]t shall be an unlawful discriminatory practice for any . . . owner . . . of any place of public accommodation, . . .because of the . . . disability . . . of any person, directly or indirectly, to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities or privileges thereof[.]” N.Y. Exec. Law section 296(2)(a).

25. The Defendant has violated the NYSHRL by, *inter alia*, denying Plaintiff the accommodations, advantages, facilities or privileges offered by Defendant, and by refusing to make reasonable modifications to accommodate disabled persons.

26. In doing the acts and/or omission alleged herein, Defendant has wrongfully and unlawfully denied access to its facilities to individuals with disabilities.

27. The Defendant has further violated the NYSHRL by being in violation of the rights provided under the ADA.

28. Plaintiff attempted to visit Defendant's Property numerous times and was unable to enter the main areas of the store due to the barriers described herein.

29. By maintaining architectural barriers and policies that discriminate against people with disabilities through the actions described above, Defendant has, directly or indirectly, refused, withheld, and/or denied to Plaintiff, because of his disability, the accommodations, advantages, facilities or privileges thereof provided by Defendant. Failure on the part of Defendant, as a reasonable and prudent public accommodation, in acting or failing to act to identify and remove barriers can be construed as a "negligent per se" act of Defendant.

30. Plaintiff has been damaged and will continue to be damaged by this discrimination as more fully set forth above.

31. Plaintiff prays for judgment pursuant to N.Y. Exec. Law § 297, including compensatory damages contemplated by § 297(9).

COUNT III - VIOLATION OF NEW YORK CIVIL RIGHTS LAW

32. Plaintiff hereby incorporates by reference all allegations contained in all preceding paragraphs of this Complaint as if they were expressly set forth herein.

33. As owner and/or operator of a place of public accommodation within the jurisdiction of the State of New York, Defendant is obligated to comply with the provisions of the NYCRL, N.Y. Civ. Rights § 40 et seq.

34. The conduct alleged herein violates the NYCRL.

35. Plaintiff has complied with the notice requirements of § 40-d as notice of this action was served upon the attorney general prior to initiating suit.

36. Section 40-c of the NYCRL states that “[n]o person shall, because of . . . disability . . . be subjected to any discrimination in his or her civil rights . . . by any firm, corporation or institution[.]”

37. The Defendant has violated the NYCRL section 40-c, by *inter alia*, subjecting Plaintiff as a person with a disability, to discrimination of his civil rights.

38. The Defendant has further violated the NYCRL by being in violation of the rights provided under the ADA.

39. This has resulted in a cognizable injury to Plaintiff.

40. Plaintiff has been damaged and will continue to be damaged by this discrimination as more fully set forth above.

41. Plaintiff prays for judgment pursuant to NYCRL § 40-d, including minimum statutory damages, and all other relief allowed by law.

WHEREFORE, the Plaintiff demands judgment against DEFENDANT, and requests the following injunctive and declaratory relief:

- A. That the Court declares that the Property owned, leased and/or operated by DEFENDANT is in violation of the ADA;
- B. That the Court enter an Order directing DEFENDANT to alter its Property to make it accessible to and useable by individuals with disabilities to the full extent required by Title III of the ADA;
- C. That the Court enter an Order directing DEFENDANT to evaluate and neutralize its policies and procedures towards persons with

disabilities for such reasonable time so as to allow DEFENDANT to undertake and complete corrective procedures.

- D. That the Court award reasonable attorney's fees, costs (including expert fees), and other expenses of suit, to the Plaintiff;
- E. That the Court award damages to Plaintiff pursuant to his state law claims; and
- F. That the Court awards such other and further relief as it deems necessary, just and proper.

Dated: September 13, 2024

Respectfully Submitted,

By: /s/ Louis I. Mussman

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